**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CIVIL APPELLATE JURISDICTION**
**SECOND APPEAL NO.237 OF 1989**

Rajaram Vishnu Anekar
Manager of Joint Hindu Family,
agriculturist of Takave,
Taluka-Shirala, Dist. Sangli. **..Appellant**

**versus**

Ramu Hari Shinde
Agriculturist of Bamnavade,
Taluka Shirala, Dist. Sangli, **.. Respondent**

Mr.Walimbe for R.V.More for appellant.
Mr.Sarang Aradhye for N.V.Pradhan for Respondent

**Coram : S.R.Sathe, J.**
**Dated : 17th March, 2006**

**JUDGMENT.**

1. Appellant, the original plaintiff in regular Civil Suit No.133/77 has preferred this Second Appeal against the judgment and order passed by the Court of 3rd Additional District Judge, Sangli, whereby the order passed by the trial Court dismissing the plaintiff's suit for permanent injunction was confirmed and the appeal was dismissed. For the sake of convenience hereafter the parties shall be referred to as plaintiff and defendants.

2. Brief facts giving rise to this appeal are as under :

. The suit land bearing Survey No.125/1 admeasuring 3Hectare 44 Acre, situated at village Takave , Tal: Shirala was originally owned by Govind and Padmakar Kulkarni. Plaintiff's father Vishnu was tenant in the said land. He died in the year 1952 and therfeafter plaintiff continued as tenant and was in possession of the said land. In 1962 plaintiff purchased the said land from the owners of the land for Rs.2000/-. On 31.3.1966 32M Certificate was granted in favour of plaintiff. Sometime in the year 1977, plaintiff came to know that defendant got his name entered in the revenue record. Not only that but on the basis of the same defedants started obstructing plaintiff's possession of the suit land. Hence, plaintiff issued notice to defendant. Inspite of receipt of notice the defendant did not give any reply and continued to obstruct, hence, plaintiff filed suit for permanent injunction against the defendant.

3. The defendant filed his written statement at Exhibit 16 and contended that the plaintiff was not alone cultivating the suit land and 32M Certificate was not issued in his favour. The defendant contended that he was tenant in the suit land alongwith plaintiff and there was such entry in the

record of rights. The plaintiff sold 9 anna shares in the suit land to him by virtue of registered sale deed dated 12.4.1962 and accordingly mutation entry No.1680 was effected. The defendants further contended that since the said day he is in actual posession of the suit land of 9 anna share as owner and as such plaintiff who has asked for permanent injunction in respect of the entire land. He is not entitled for the same. In the alternative defendants contended that he is in posesion of the suit land for continuous period of more than 21 years without interruption, publicity and to the hostile title of the true owner. He, therefore, prayed for dismissal of the suit.

4. On these pleadings the learned trial Jugdge framed issues at Exhibit 17. Both the parties did not aduce any oral evidence, but relied on documentary evidence.

5. After considering the evidence of both the parties the learned trial judge came to the conclusion that plaintiff has failed to prove his title to the suit land and he was not in exclusive possession of the suit land on the date of the suit. He also held that defendant has infact proved his

title to 9 anna share from Northern side of the suit land and hence plaintiff is not entitled for injunction. He, therefore, dismissed the suit.

6. The plaintiff challenged the said order in the first appeal but the same also came to be dismissed. Being aggrieved by the same, the plaintiff has filed the present second appeal.

7. From the perusal of the record, it appears that at the time of admission this Court (Coram S.M.Dawood, J.) passed the following order at the time of admission of the appeal. "The substantial question of law being the validity or otherwise of the sale deed allegedly passed by the appellant in favour of the respondent."

8. In this appeal before me the learned Advocate for the appellant-plaintiff has urged only three points. Firstly, he submitted that the courts below ought to have considered the fact that the sale deed executed by the plaintiff in favour of the defendant was without prior permission of the collector and as such the same is not legal and valid and defendant has not acquired any title. Secondly, he canvassed before me that on the Tillers

day plaintiff was in possession of the suit land and he became owner of the same. However, 32M certificate was granted in his favour on 31.3.1966 and thus he acquired ownership. So, in either case according to him the sale deed executed in favour of the defendant was illegal and as such the defendant has not acquired any rights. Thirdly, he submitted that there is no evidence to show that the defendant was tenant in the suit land and Mutation Entry No.680 was got entered by joining hands with the concerned revenue officer. He, therefore, submitted that the appeal be allowed and plaintiffs suit for permanent injunction be decreed. He also submitted that if it is held that defendant is in possesion, then the plaintiff is entitled for restoration of the possesion. As against this, the learned Advocate for the defendant supported the judgment and order passed by the courts below.

9. From the pleadings of the parties it is very clear that the plaintiff deliberately suppressed the fact that he has executed a sale deed in favour of the defendant on 12.4.1962. The tenor of plaitiffs averments in the plaint was that defendant is absolutely not concerned with the suit property and he falsely got his name entered and on that basis

started obstructing the plaintiff. However, from the evidence on record, now it is established that the plaintiff had infact executed the sale deed in respect of 9 anna share out of the suit land in favour of the defendant on 12.4.1962. The sale deed is at Exhibit 76. From the last portion of the sale deed it is also very clear that even on that day the defendant was a tenent in the said land. There is averment to that effect in the sale deed. The execution of the sale deed is now not disputed. The plaintiff has given no objection to exhibit it. So, from the said sale deed as well as from the 7 x 12 extracts which are at Exhibit 69 to 71 it is clear that defendant was in fact a tenant in the said land. What is more to be noted is that by virtue of the said sale deed defendants exclusive possession to the extent of 9 anna share in the northern portion of the suit land is admitted. So, the very basis of the plaintiff's suit that defendant is not in possession of the suit land is not correct. So, both the courts below rightly held that on the date of the suit plaintiff was not in exlcusive possesion of the suit land and as such he was infact not entitled to claim any injunction in respect of the entire suit land.

10. It appears that taking advantage of the fact that when the said sale deed was executed by plaintiff in favour of the defendant no permission was sought from the collector and thereafter 32M certificate was granted in favour of plaintiff on 31.3.1966. The plaintiff has tried to take advantage of the same to evict the defendant from the said land. For that purpose now he has taken the stand that the sale deed executed by him in favour of the defendant is not legal and valid. So this itself shows that now the plaintiff is in a way trying to take advantge of his own wrong. If, according to him at that time it was necessary to seek permission, he should have done that. Besides this, if it was his case that he has no title then also he should not have executed the sale deed. So, under such circumstances when the plaintiff himself has sold the property and put the defendant in possession of the same, after accepting the consideration for the said land, plaintiff now is not entitled for permanent injunction. As the plaintiff has in fact suppresed material facts, it must be held that he has not come to court with clean hands and as such also he is not entitled for injunction as prayed.

11. The plaintiff's suit being the suit simplicitor for permanent injunction, the fate of this appeal, in my opinion, does not depend on the issue as to whether the sale deed executed by the plaintiff in favour of the defendant on 12.4.1962 is legal and valid. Admittedly, as per the sale deed the defendant is in possession of the suit land and even on the date of the suit also defendant was in possesion of 9 anna share of northern portion of the suit land. Thus, the defendant is having continuous possession for the period of about 21 years since prior to the filing of the suit. So, even if it is assumed for the sake of arguments that the sale deed executed by the plaitiff in favour of the defendant is illegal, still then defendant can not be evicted from the suit land in the present suit which is in fact the suit for permanent injunction. Merely because plaintiff has averred in the plaint that if it is found that during pendency of the suit defendant has forcibly taken possession then defendants unauthorised possession has to be removed and plaintiff be restored with the possession, it can be said that plaintiff is entitled for possession of the suit land in the present suit. As pointed out above, it was plaintiff who has in fact handed over possession to the defendant under sale

deed. So, by no stretch of imagination it can be said to be unauthorised. Moreover there is nothing to show that during the pendency of this suit defendant has taken forcible possession. So, plaintiff's prayer in that behalf cannot be granted. Moreover the Civil Court has in fact no jurisdiction to decide as to whether the sale deed in question executed by the plaintiff in favour of defendant on 17.4.1962 is void. It must be noted that the plaintiff has in fact not at all referred to the sale deed and has not sought any such declaration in the present suit. So, under such circumstances, the ruling cited by the learned Advocate for the appellant/plaintiff namely Dadu Rahu Yelavade vs. Himmat Patel (1992) 2 SCC 573 is of no use to plaintiff to prove the plaintiff's present claim.

12. In this view of the matter, I have no hesitation to hold that both the courts below have rightly considered the documentary evidence on recorde and have correctly held that the plaintiff is not entitled to get any relief as claimed. Thus, there is no substance in this appeal.

13. Appeal is dismissed with costs.

**(S.R.Sathe, J.)**

. For the reasons recorded seperately, the appeal is dismissed with cost.

(S.R.Sathe, J.)